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CRIME AND IMMIGRATION.

(REPORT OF COMMITTEE G OF THE INSTITUTE.)

GINO C. SPERANZA, CHAIRMAN.¹

The work of this committee, briefly stated, has been first to inquire whether the alien in this country is at a substantial disadvantage or under substantial disabilities in comparison to the native, in his relations to the courts of law, and, second (if such substantial disadvantages or disabilities exist), to ascertain what the law endeavors to provide to compensate them, or what can be suggested to meet them.

In a country like ours, composed largely of aliens, and especially of those aliens who because of the lack of education, means or experience (and which we call immigrants), are especially at a disadvantage outside of their native environment, this question is one of national importance. As I pointed out in a report to the National Conference of Charities and Corrections two years ago, "nothing will more powerfully enlarge the cleavage between aliens and citizens as an unfair, partial and 'special class' application of the laws, or more successfully make even the humblest of these aliens devoted children of the nation

¹[Report presented at the Third Annual Meeting of the Institute, at Boston, September 2, 1911.

The resolution of the Institute, passed at the second annual meeting, in Washington, September, 1910, defined the scope of the committee's work. The resolution, and the names of the committee appointed thereunder, are as follows:

"Resolved, That there be appointed a committee on crime and immigration, whose duty shall be to investigate and report upon the subject of alien crime; the alien and the courts, with special reference to treaty rights; and status under the various state laws; and to procedure, including interpreters, appeals, etc."

Gino C. Speranza, New York City (counsel for the Italian Consulate, member New York State Immigration Commission, 1900-1909), *chairman*.

Julian W. Mack, Washington (judge, Court of Commerce, and former president, Conference of Charities and Correction).

Frances A. Kellor, New York City (secretary New York Immigration Commission).

William I. Thomas (professor, University of Chicago).

John R. Commons, Madison (professor, University of Wisconsin).

William E. Bennett, New York City (member Federal Immigration Commission).

Bronson Winthrop, New York City (member Legislative Committee on Criminal Courts).

Jane Addams, Chicago (Hull House).

Grace Abbott, Chicago (Hull House).

John M. Coulter (professor, University of Chicago).

Rudolph Matz, Chicago (lawyer, president Legal Aid Society).

Eds.]

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than unprejudiced and exalted justice. . . . We may regret that there is such a large foreign element in the Republic; we may doubt if even this young and resourceful country can assimilate it; but whether for good or evil, these aliens are here with us. Even if we think it wisdom to shut the gates to further invasion, there is still the problem of those already within, and doubts and fears and *post-facto* regrets will not solve the problem. We are all, irrespective of our birthplace, filled with the instinct for fair play; the feeling of outrage in the face of injustice is a universal sentiment. We respect the law that protects us in our life and property and in our pursuit of happiness. In the end, the best of us would rebel against a judicial system which did not furnish a substantially effective defense against palpable recurring injustice."

1. *Treatment of the Alien by American Law and Courts.*

To ascertain whether the alien is at a substantial disadvantage before our laws is essentially an inquiry into existing conditions. This committee, therefore, was most glad to accept the offer of the Research and Legislative Committee of the North American Civic League, of New York City, and of the Immigrant Protective League, of Chicago, to investigate conditions of aliens in our courts, the first in New York and New Jersey, the latter in and about Chicago. The report of the North American Civic League is not yet ready, but I annex an outline of the method pursued in its investigations (Exhibit A).

Miss Grace Abbott, of Hull House, on behalf of the Immigrants' League, has been able, despite the short time allowed, to submit an exhaustive report regarding conditions of aliens in the Chicago courts of inferior criminal jurisdiction. I annex Miss Abbott's summary as part of my report, calling your special attention to the comprehensive suggestions made by her.

Interesting and helpful as the findings of these special committees are, they can only, in my opinion, corroborate what is obvious to anyone who has had something to do on behalf of aliens in our courts. The very existence of treaties between our country and other powers is proof that special guarantees are necessary for the full protection of the alien in our midst. Discrimination between citizen and alien, though happily becoming less and less marked the world over, is still substantially applied. The most striking example is given by our immigration statutes. We classify arriving aliens into "desirable" and "undesirable," and we allow non-judicial tribunals, such as "the boards of special inquiry," to apply this indefinite classification. We have a perfect right to do so, but I point it out as an example of statutory discrimination that places the

alien at a disadvantage from the very beginning of his relations with us. Such discrimination hangs over him for three years after his arrival, during which period he may be ordered deported for certain causes by non-judicial authorities.

Irrespective of the immigration statutes the existence of the disadvantage of the alien after he lands is shown not only, as I have said, by the existence of special treaty guarantees, but by the increasing state legislation which is being exacted in a commendable endeavor to decrease the disabilities of aliens. I have especially in mind the state enactments which have been passed within the last two years to protect the savings of immigrants and to bring some relief to the intolerable conditions which exist in many courts of inferior criminal jurisdiction through incapable and dishonest interpreters, shysters and prejudiced judges. It is to the credit of New York, the largest of our immigration centers, that such legislation has been carried furthest by the creation of a bureau of immigration and industries and the enactment of drastic measures against immigrant banks.

But the highest recognition of the fact that the alien, of the class known as the immigrant, is at a disadvantage, is to be found in the decision of the United States Supreme Court upholding the constitutionality of such legislation. In *Engel v. O'Malley* (U. S. Supreme Court, January 3, 1911), Mr. Justice Holmes, in writing the opinion upholding the New York law which required certain guarantees from bankers dealing with immigrants, says: "The former of these exceptions has the manifest purpose to confine the law as nearly as may be to the class thought by the *Legislature to need protection*," and cites *Heath v. Milligan* that "legislation which regulates business may well make distinctions depend upon the degree of evil." Further on, in considering the classification of bankers whose average amount received is not less than \$500, the court says: "It is true, no doubt, that where size is not an index to an admitted evil the law cannot discriminate between the great and small but, in this case, size is an index. Where the average amount of each sum received is not less than \$500, we know that we have not before us the class of *ignorant and helpless depositors, largely foreign, whom the law seeks to protect*."

Against this tendency to recognize and seek to remedy the disadvantages of the aliens we observe a counter legislative current which seeks to deprive the alien laborer of the equal protection and advantage of the law with citizen laborers. Of this class we might cite the Alien Labor Law in the State of New York and the Employers' Liability Law of New Jersey. The Alien Labor Law of New York makes it a misde-

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meanor for employers engaged in state work to employ alien laborers when there is a sufficient supply of native help. Such a law seems grossly discriminatory and will undoubtedly be the subject of judicial battles. The discrimination of the new employers' liability law of New Jersey is so against the spirit of humanity that we must hope for its speedy amendment. The law excludes from the right of compensation in case of death due to negligent killing, alien dependents who are not within the United States when the accident which deprives them of their support occurs.

To remedy such unfair disadvantages we must first and most potently depend upon an enlightened public opinion. And, in fact, Pennsylvania and Wisconsin, which made discriminations against aliens similar to that fixed by the New Jersey statute, have recently remedied the situation.

But while an enlightened public conscience and a better understanding of the disabilities to which a man outside his country is subject, will bring substantial relief to existing disadvantages, the difference of population, legislation and political ideals in our forty-seven states makes it impossible to substantially extend to the alien in our midst the equal protection of the law except through the extension of the federal power and the broader application of treaty provisions to existing conditions. Most treaties between the United States and foreign countries have the following provision: "The citizens of each of the high contracting parties shall receive in the states and territories of the other the most constant protection and security for their persons and property." . . . But, as President Taft long ago pointed out, "Our country entering into treaties of this kind with every government on earth is put in the most pusillanimous position of promising that subjects of another country shall be properly treated, and then of having no means of carrying out the promise, or of punishing those who violate it." I do not believe, however, that the extension of federal power to compel the observance by the states of the treaty guarantees which by our constitution are solemnly made a part of the supreme law of the land, will of itself compensate the disabilities of the alien in our midst, though it will largely mitigate them. In my opinion, inasmuch as alien with us means immigrant, and immigrant means one requiring *more* than the usual protection afforded by treaties, we must either through the enactment of international immigrant conventions broaden the application of such protective provisions, or else apply existing provisions of treaties in a more liberal spirit to the actual immigrant conditions as they exist in our country. In other words,

relief must come either through express legislative enactment by international conventions regarding immigration, or judicial amplification of the application of existing treaty guarantees. That the latter, however difficult, is possible of much beneficent application is shown by the work which has been accomplished by the Italian and Austro-Hungarian governments in the protection and administration of the estates of their immigrant subjects dying in this country. By invoking the power granted by treaty and convention they have secured from the state courts and state officers the most helpful co-operation, resulting in the savings of hundreds of thousands of dollars, representing wages or the price of negligent killing of their subjects, which once were either lost or reduced to such a minimum as to make alien life in our great works the cheapest of all materials.

2. *The Criminality of Aliens.*

I do not feel that I should close this brief summary of a large question without some reference to the other side of the problem of the alien and our courts. I refer to the criminal alien. The best friend of the immigrant cannot close his eyes to a shocking amount of crime and criminality, which throws a dark cloud on the great mass of honest immigrants. The most disquieting aspect of the situation seems to me the inability of our officers and courts to punish such criminality, or even to reach it. This, in my opinion, is largely due to the fact that our judicial system and our judicial machinery are unsuited and unprepared to deal with the character, methods, habits and traditions of these aliens, most of whom are not only totally foreign to the race of the founders of our commonwealth, but strangers to each other, "distinct in their histories, enormously uneven in their political developments and widely apart in their aspirations and ideals."

While to remedy this seems well-nigh impossible without fundamentally changing our judicial bulwarks, there are, nevertheless, some means of relief which, strangely enough, we have hesitated to apply. In singular contrast to our stern application of our laws on *deportation* is our fearsome attitude toward the remedy of *extradition*. If an arriving immigrant has been convicted of a crime by the government of his native country, we recognize that conviction as stamping the immigrant as a criminal, and promptly and gladly send him back. But if an immigrant, who has passed the gates, is wanted by the same government (whose conviction we honored in the deportation case) because that government wants to try him and judge him according to law, then we invoke every legal and political means to keep such criminal with us. We have a horror of a deportable criminal, but we seem to

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sanctify an extraditable one. I have in mind the case of a dangerous murderer that was wanted by a foreign government, whose efforts at extradition were nullified by some technical defense to the government's demand. On his release, the American press exultingly announced the victory of Anglo-Saxon procedure by articles entitled, "Such and Such a Government Cannot Take X. Y. from Uncle Sam." And that man, who has a number of murders to his record, is still with us. The fact is that the old idea of the right of asylum still lingers in our minds; that many of us think that foreign powers use extradition proceedings as a means to get back political offenders. A little more confidence in the good intentions of many foreign governments would rid our country of much of the criminality against which we seem unable to cope. I know of one country that has been forced to give up all extradition proceedings with this government as the provisions of the existing extradition convention have been applied so strictly by our courts that it cannot get back any of its fugitives. Upon you who are interested in the suppression or reduction of crime in this country and to whom the inability of our judicial system to grapple with the increasing volume of alien criminality must seem especially sinister, rests the work of awakening public opinion to the necessity of modifying extradition conventions and giving more faith and credit to the demands of foreign governments in the surrender of fugitive subjects charged with crime.

I believe that the American Institute of Criminal Law has not only a clear duty before it, but the means for a real service to our country if it will continue the work undertaken by this committee and increase it along these three main lines: *First*, to teach the alien among us the respect of our laws and our courts by making it possible for him to find in them equal protection and equal opportunities that are extended to the citizen. *Second*, to seek ways and means to aid the efforts of foreign governments to discipline and help the current of immigration and emigration to and from our country. *Third*, to cooperate with foreign governments in an endeavor to establish safe and reliable means to prevent criminals from coming to our country and of surrendering fugitives to the justice of foreign governments by some inexpensive and prompt proceedings. All of which is respectfully submitted.

GINO C. SPERANZA

EXHIBIT A (TO REPORT OF COMMITTEE G).

DETAILED OUTLINE OF THE PLAN OF INVESTIGATION INTO
THE TREATMENT OF FOREIGN-BORN PERSONS
IN THE COURTS.

I. Machinery of Justice.

(a) *Federal Courts.*

1. Civil Courts and Criminal Courts.

(1) Judges; (2) clerks and attendants; (3) interpreters; (4) procedure; (5) jury: (a) use of race prejudice on jury, (b) professional jurymen; (6) lawyers; (7) consuls; (8) United States District Attorney, other Federal Officers' methods of dealing with cases of alien.

Note.—Special observations will be necessary in the Federal Courts to establish:

(1) The relation of the foreign-born sailor vs. the steamship companies; (2) bankruptcy cases to establish or destroy the contention that a great per cent of foreigners are thrown into bankruptcy by trickery.

(b) *State Courts.*

1. Civil and Criminal Courts.

(1) Physical conditions and equipment; (2) judges; (3) clerks and attendants; (4) interpreters; (5) procedure; (6) Attorney-General's Office, officers and methods.

Note.—Special observation of cases of foreigners in these courts under the excise, labor, real property, domestic relations, laws, etc.; also Court of Claims cases involving foreign-born.

(c) *County Courts.*

1. Surrogates Court—Probate Court Coroner.

Particular reference to appointment of guardians and the settling of claims arising from the death of foreign-born. Public Administrator.

Note.—Shall try to establish relation between coroner and administrator appointed at his request to settle up claims against corporation resulting from death of foreigner.

(d) *City Court.*

Civil—This court tries cases up to \$2,000; ascertain per cent of foreign element in this court.

(e) *Municipal Courts.*

Civil—This court tries cases of sums up to \$500. There are nine such courts in New York, two in Bronx, besides Brooklyn and Queens.

Note.—The observation here would be confined to looking for cases where foreigners are being fleeced, statistics in business deals, and watching the lawyers.

(f) *Magistrates' Courts.*

1. Criminal Courts.

(1) The eight Day Courts; (2) the two Night Courts: (a) Women's Court, (b) Men's Courts; (3) the one Domestic Relations Court.

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2. Physical Conditions and Equipment.

(1) Court room proper; (2) complaint room: (a) Is Magistrate's order enforced? (3) detention pens: (a) Who has access? (b) Are hardened criminals and first offenders put together?

3. Court Officers.

(1) Judge; (2) clerks and attendants: (a) ability; (b) political connections; (c) community affiliations; (d) relations with and general attitude toward foreign-born; (3) Interpreters: (a) efficiency, ability; (b) political connections; (c) community affiliations; (d) relation with prisoner out of court; (4) probation service; (a) officers, number, how appointed, civil service or political fitness; (b) hearings of probation cases; (c) "Big Brother" and kindred movements.

4. Outsiders.

(1) Shyster lawyers: (a) ability, reputation, record; (b) methods, fees, charges; (c) political connections; (d) relations with the judge and court attendants; (e) why alien is victim and how often—new or old; (f) runners and connections; (g) records of Bar Association Grievance Committee; (2) professional bondsman: (a) connection with court officials, etc.; (b) operations among aliens; (c) what nationality does he exploit?

2. Machinery of Penal Institutions, Correctional Institutions, Hospitals, Asylums.

(a) *Prisons.*

1. Sing Sing.
2. Blackwell's Island.
3. Jails.

Note.—Observations will have to be made as to physical conditions, treatment of prisoners, meals, medical assistance, etc.

Interview prisoners, find out story, family, personal and economic facts of value.